



claimant or claimant's counsel giving them the opportunity [sic] to object to the ex parte oral contact and such notice shall be given a minimum of seven (7) days. Email or fax notification [sic] will suffice. HIPAA as set forth in 45 CFR § 164.512(e). See Crenshaw v. MONY Life Ins. Co., 318 F.Supp.2d 1015, 1029 (S.D.Cal. 2004) and Austin v. Moreland, 288 Ga.App. 270 (653 SE2d 347) (2007).<sup>1</sup>

Respondent argues that 45 C.F.R. § 164.512(l) states:

A covered entity may disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.<sup>2</sup>

Respondent further asserts that claimant's construction of HIPAA is too onerous for workers compensation cases, arguing that respondents are involved in the selection of the treating physician, direct claimant's medical treatment, and directly pay for claimant's medical treatment. Respondent argues that, therefore, respondents should not have to provide notice to question a bill or see whether a report has been generated. Further, respondent contends that claimant's proposed language would prevent a respondent from communicating with its own medical expert, jeopardizing the sanctity of attorney work product. Accordingly, respondent requests the Board deny claimant's appeal of the ALJ's Order for Production of Medical Records.

The issues for the Board's review are:

- (1) Does the Board have jurisdiction over the issue in this appeal?
- (2) Is there a sufficient evidentiary record for the Board to conduct a meaningful review?
- (3) If so, should the HIPAA language as set out by claimant be included in the Order for Production of Medical Records?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After a review of the file and the arguments presented in the briefs to the Board, the Board finds and concludes that it does not have an adequate record to review the ALJ's Order for Production of Medical Records.

K.S.A. 2008 Supp. 44-551(i)(1) limits the Board's jurisdiction to review of "final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and

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<sup>1</sup> Claimant's Brief at 1 (filed Jan. 12, 2009).

<sup>2</sup> Respondent's Brief at 2 (filed Jan. 29, 2009).

amendments thereto made by an administrative law judge . . . ." The ALJ's Order for Production of Medical Records is interlocutory in nature. Nevertheless, it may be treated as a final order if it reserves no further question and the issues cannot be adequately reviewed at the time of the final award.<sup>3</sup>

The Board is not granted original jurisdiction over workers compensation issues but is limited to considering issues initially decided by an administrative law judge.<sup>4</sup> K.S.A. 2008 Supp. 44-555c(a) limits the Board's review to "questions of law and fact as presented, had and introduced before the administrative law judge." In following that mandate, the Board finds that claimant has failed to make a record that shows she made a timely objection to the proposed order or what relief was sought from the ALJ to that order.<sup>5</sup>

**WHEREFORE**, it is the finding, decision and order of the Board that claimant's appeal of the Order for Production of Medical Records of Administrative Law Judge John D. Clark dated December 17, 2008, is hereby dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of March, 2009.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant  
Douglas C. Hobbs, Attorney for Self-Insured Respondent  
John D. Clark, Administrative Law Judge

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<sup>3</sup> See *Skahan v. Powell*, 8 Kan. App. 2d 204, 653 P.2d 1192 (1982); *Rhodeman v. Moore*, Docket No. 234,890, 1999 WL 1008029 (Kan. WCAB Oct. 12, 1999).

<sup>4</sup> K.S.A. 2008 Supp. 44-555c(a).

<sup>5</sup> See, e.g., *Crease v. Vezers Precision Industrial Constructors International*, Docket No. 1,035,775, 2007 WL 4662039 (Kan. WCAB Dec. 12, 2007); *Laverentz v. Sedgwick County*, Docket No. 1,017,534, 2004 WL 3089882 (Kan. WCAB Nov. 19, 2004).